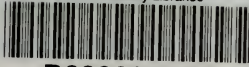


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DIGEST

OF THE

COMPTROLLER'S DECISIONS,

IN SOME OF THE LEADING CASES PRESENTED TO
HIM FOR SETTLEMENT.

Confederate States of America

"Judex bonus secundum equum et bonum judicial."

RICHMOND, VA.:
SMITH, BAILEY & CO., PRINTERS.
1863.



*George Washington Flowers
Memorial Collection*

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PREFACE.

Having learned during a life of varied experience, and of constant and assiduous study, the great importance of having doubtful and mooted questions settled, and that certain land-marks should be erected, by which the Ship of Life or of State, may be steered through the breakers and quicksands of human vicissitude, I have long since come to the conclusion that there can be no rule of higher excellence than that we should avail ourselves of whatever lights of experience we may find to cast their rays across the uncertain path of life, to illumine and direct our course in searching ing after truth and justice. One of the wisest of men has enunciated the immutable axiom, "misera est servitus ubi jus est aut vagum aut incertum." Adopting this maxim for my guide, I have endeavored, to the best of my humble ability, to decide upon and establish certain determinate rules in the interpretation of the law, by which those may be directed who have to enforce them in practice, even if future experience and subsequent legislation shall inculcate their modification, or their entire change. There is deep wisdom, however, in the ancient maxim, "bonum est stare decisis, si non manifeste falsis aut iniquis," as well as in that higher moral adage, "judex bonus secundum æquum et bonum judicat," and the equally wise principle, "boni judicis est lites dirimere." The dictates of patriotism should inspire and impel every good citizen of our Confederacy, to offer up his tribute upon the altar of his country's good, and to exert his utmost capacities to take care, like the devoted sons and sires of Rome, "ne quid detrimentum respublica capiat." Conscious, however, of the infirmity of human reason, and the fallibility of the human intellect, I can only profess to have exerted my best ability in elucidating and resolving the doubtful points that have presented themselves, (whether correctly, or not, future experience must evince,) under the solemn conviction, which the knowledge of life is daily and deeply inculcating, that "*Deus solus sapit.*"

LEWIS CRUGER,
Comptroller.

DUTIES OF THE COMPTROLLER.

It is made the duty of the Comptroller, by act No. 25. (approved February 21, 1861.)

1st. To superintend the settlement of the public accounts, and to receive these accounts from the Auditors with the vouchers and certificates for his decision thereon.

2nd. To countersign all warrants drawn by the Secretary of the Treasury which are authorized by law.

3rd. To report the official forms of papers in the different offices for collecting the public revenue.

4th. To provide for the regular and punctual payment of all moneys collected.

5th. To direct prosecutions for all delinquencies of officers of the revenue and for all debts that are or shall be due to the Confederate States. This act imposes upon the Comptroller the duties of four distinct bureaus under the United States Government—viz: those of 1st Comptroller, 2nd Comptroller, Commissioner of Customs, and Solicitor of the Treasury. Act No. 128, (approved May 16, 1861,) declares his decisions under that act to be final and conclusive. Such was the decision of the United States Supreme Court, as to the effect of these decisions upon the Executive branches of the Government. The United States act of March 3rd, 1809, makes it his duty, whenever he considers delays injurious in the settlement of accounts in the Auditors' offices, to direct them forthwith to settle any particular accounts, and to report the same for his final decision.

DIGEST

OF THE

COMPTROLLER'S DECISIONS,

IN SOME OF THE LEADING CASES PRESENTED TO
HIM FOR FINAL SETTLEMENT.

1. Vouchers.

Original vouchers must be produced to the accounting officers. Duplicates cannot be admitted unless accompanied by satisfactory evidence of the loss or destruction of the originals.

2. Purchases.

The specific purpose for which all articles are purchased, or used, should be stated in, or noted upon, the voucher to enable the accounting officers to designate the proper appropriation to which they should be charged.

3. Comptroller's Decisions.

In accordance with the case of Major Wheaton, decided at Washington, "The settlement of an account by the proper accounting officers is final and conclusive, so far as concerns the Executive Departments of the Government. If the individual, whose account has been thus settled, conceives himself injured by such settlement, his recourse must be to the Judiciary or to Congress." In the case of Gen. Taylor, the Hon. Roger B. Taney says: "The decision of the Comptroller is conclusive upon the Executive branch of the Government."

4. Assigned Claims.

As to the assignment of claims against the Government, the acts of the United States Congress of 2d July, 1846, and the 26th of February, 1853, do not refer to such cases as the arrears of pay due to soldiers, under certificates given by duly authorized officers, for a *certain and fixed sum*, which, being in the nature of *liquidated debts*, may be assigned at any time, by power of attorney. Those acts refer only to doubtful and uncertain claims prosecuted before Congress or the Departments, which cannot be assigned until the claim is settled and liquidated and a warrant issued. The object of the law was to preclude the frauds of lobby agents.

5. Sheriff's Fees, etc.

(In a case of the Sheriff of Henrico County.) The fees established by the laws of the different States for the support of prisoners in jail, are to be allowed in cases of Confederate States prisoners, when those fees do not exceed the amount of commutation rations fixed by our Army Regulations, which, in some cases amount to seventy-five cents per day, whilst the claim in this case is but fifty cents per day.

6. Certified Copies.

(In the case of General McAfee, agent for the State of Mississippi.) All certified transcripts of documents from the office in which they are recorded, (whatever that office may be,) are to be allowed as good vouchers, and of higher validity than telegraphic dispatches, which have been decided to be of little or no validity.

7. Assignees.

A claim against the Government, in the hands of an assignee of the original creditor, is subject to all the equities existing between the assignor and the Government, and those equities, so far as they are in favor of the Government, must be satisfied before the assignee can take the benefit of his assignment.

8. Officers or Claimants in Arrears.

No person can receive compensation for his services to the Government when he is in arrears to the Government, until he shall account for, and pay, the amount for which he is liable. (See act 25th Jan., 1828.)

9. Purchases Authorized.

When a purchase is made by a duly authorized officer of the Government, the party from whom he purchases is not bound to show what disposition that officer has made of the property.

10. Purchases not Authorized.

When a purchase is made by a person, or officer, claiming to be duly authorized, but not so in reality, the Government is not bound to pay for the property unless the vendor shows that the property purchased has been actually used in the public service.

11. Officers Exceeding their Powers.

When an officer exceeds his powers, he becomes individually responsible, and cannot bind the Government by his illegal contract.

12. Property Illegally Destroyed.

The Government is not liable for property illegally destroyed by private soldiers not acting under orders, and no voucher for payment of such damages by a disbursing officer can be allowed in the settlement of his account.

13. District Attorneys.

In the accounts of District Attorneys for their per diem allowance whilst attending the sessions of Confederate States Courts, charges for Sundays cannot be allowed.

14. Omission of Middle Name.

Such discrepancies on the Pay Rolls, as the omission or insertion of a middle name, or the initial letter of that name, are not such defects as to require their suspension. In the case of *Gaines vs. Stiles*, 14 Peters' Reports, page 322, it was decided that, "The law knows but one Christian name, and the omission or insertion of the middle name, or the initial letter of that name, is immaterial, and it is competent for the party to show that he is known as well without, as with, the middle name."

15. Difference in Spelling.

Nor is a slight difference in the spelling of a name a sufficient cause for suspension. The spelling and pronunciation of proper names are entirely arbitrary with families,

as originally established by themselves. And it cannot be expected that the Pay Rolls will be critically accurate in these matters, especially in time of war.

16. Officers Ordered to Report for Duty.

When an officer is ordered to *report for duty*, and the officer in command to whom he is directed to report, informs him that he has no need of his services, he is still entitled to duty pay *until otherwise ordered* by the proper authority. Such duty pay is to commence from the date of his acceptance, or leaving his domicile, (or station,) to make such report.

17. Pay of Collectors of Customs.

Where salaries are limited to receipts from *fees*, if, *during the fiscal year*, a sufficient amount has been collected by a Collector of Customs, to reach the maximum of his compensation, he is entitled to that compensation without reference to the *particular quarter*, or month, in which such fees are collected.

18. Transportation in the Ordnance Department.

The transportation of such articles as are materials for manufacturing ordnance, powder, etc., would seem to be a natural and necessary incident to their purchase and use. Transportation in the Ordnance Department, is recognized by paragraph 1341, (item 10th,) of the Army Regulations. I therefore think the transportation of *iron* may be paid by the Ordnance Department, and charged under the head of "*purchase of pig and rolled iron.*" The moving of *cannon* from one ordnance depot or store, to another, may be paid and charged under the head of "*Ordnance Service.*" Paragraph 958, of Army Regulations, does not seem to refer to transportation of materials, etc., from which to manufacture "*army supplies*;" but only to providing "*quarters and transportation of the army,*" *itself*, and *its necessary supplies therein specified*, such as "*clothing, equipage, food, fuel, &c.*"

19. Soldiers Travel-pay and Rations where Transportation is Furnished.

Under the United States act, of May 13th, 1846, volunteers are entitled to one day's pay and subsistence *for every twenty miles travel to the place of rendezvous, from their place of residence*, and mounted men are, in addition, entitled to

forty cents per day for the use and risk of their horses, and the legal rate of forage.

Under the United States act, of *January 11th, 1812, sec. 22*, and act of *January 29th, 1813, sec. 15*, soldiers *honorably discharged*, are allowed one day's pay and rations for every *twenty miles* travel from the place of *discharge to their place of residence*.

Confederate States act No. 153, May 21st, 1861, allows to mounted volunteers forty cents per day for the use and risk of their horses for every *twenty miles travel* from the *place of discharge to the place of enrollment*." These rates may therefore be regarded as established by law, for *enrolled or enlisted men to the place of rendezvous* and for *discharged men to their place of residence or enrollment*.

20. Claims of Discharged Soldiers.

Claims of discharged soldiers presented subsequent to payment on certificate of discharge, should be audited through the Second Auditor's office, when the rolls in these cases are either in that office, or the Quartermaster General's office, and easily accessible to the Clerks of the Second Auditor. Whilst to Quartermasters at other points, these rolls would not be accessible.

21. Interest not paid by Government.

The ancient law maxim of "*nulla usura occurrit regi*," has been the *general rule of all governments*, and has been repeatedly so decided, as based upon the principle that the government is presumed to be *always willing and ready to pay its obligations*. To this *general rule* the only exceptions appear to be where interest is due by *government contract*, or where the claimant has been compelled to pay interest for the *benefit and business* of the government, as where a State has been compelled to raise money upon interest to suppress hostilities, etc.

22. Right of Impressment.

The exercise of this right in time of war, results properly from the delegated sovereign right of "*declaring and waging war*." It is also claimed as resulting from the right of "*eminent domain*."

1st. The right of *eminent domain* (or dominion,) is the supreme control which appertains to *sovereignty*, over the entire property within the limits of the State, and necessarily involves the right to take the property of citizens for public use when deemed essential to the common welfare. Vattel

defines it to be "*the right which belongs to the society, or to the sovereign, of disposing, in case of necessity, and for the public safety, of all the wealth contained in the State.*" He then proceeds to declare that "every Prince who is *truly sovereign* is invested with this right, when the *nation* has not excepted it."—Vattel b. 1, ch. 20.

As our governments are but limited *agencies*, they can only *by delegation*, exercise the right of *eminent domain*. This right is understood to be delegated by that clause of the Constitution which declares that private property shall not be taken for public use without just compensation. This provision obviously confers (as a "negative pregnant,") and as shown by the *debates of the Convention*, the right to take such property WITH just compensation.

2d. This right *in time of war*, however, is more appropriately derived from the delegated sovereign power of *declaring and waging war*, and it may be exercised whenever ("ex necessitate belli") it is found necessary for sustaining, and saving the troops from suffering, and to enable the government to *prosecute the war*.

3d. The exercise of this right is recognized in two of the United States acts of Congress, which declare that property coming into the military service of the United States, either by contract or *impressment*, should be paid for according to its value at the time of coming into the service. It is therefore evident that our government *possesses the right to exercise this power*, and it is proper that some rules should be adopted to regulate the taking, and paying for, such supplies under the orders of some commanding officer, rather than to leave the seizure, (which is *inevitable in cases of necessity*,) to the unbridled license of the soldiery. The following rules were adopted on the 1st of January, 1862:

23. Rules Adopted by the Comptroller as to Property Taken and Used by Confederate Troops.

1st. Whenever property has been *taken and used* by the troops, *as supplies*, by order or approval of a *commanding officer*, (including any commissioned officer in command,) as shown by his signature; or in case of a General, by that of his Adjutant, or that of a Quartermaster, Commissary, or other authorized officer; or when an appraisement made of such property is approved by such officer, a fair and just compensatson should be made for the same according to the appraisement, (if not excessive,) or according to the approval (when not appraised) under the head of *supplies for the Army*.

2nd. When property has been *simply destroyed*, it is to be regarded as a *claim for damages*, which should be presented to Congress for allowance, (as there is no law nor appropriation for such damages.) In such cases of property destroyed, (whether by order of an officer or not,) or where no law provides for the proper payment thereof, the claims and testimony should be presented to the Attorney General, to be by him reported to Congress, in compliance with the act of Congress, No. 264, approved August 30, 1861.

3rd. When *fencing* or other *wood* has been used, apparently, or on *reasonable presumption*, for *fire-wood*, the same should be paid for on appraisement, or approval, as above stated.

4th. Where any *building* has been used for a *hospital*, it is proper that injuries to the building, whilst so used, should be paid for on such appraisement approved by the Surgeon in charge. (To be confined strictly to injuries resulting to such building from its actual use as a hospital, to be *shown by appraisement*.)

5th. In case the approval of a commanding officer, or other authorised officer, cannot be obtained for such supplies, such claims should be presented to Congress, or to some examining officer who may be appointed by the Secretary of War.

24. Horses Killed in Action.

It appears to be a sufficient compliance with the spirit and intent of the 7th section of act No. 48, that two or more officers should certify that they knew the horse at the time of his entering the service, and that they then, at the request of the owner, estimated his value at some certain sum. This may be regarded as constituting, in this time of war, a *virtual*, though not a *formal* appraisement, which the law does not in fact require, but merely speaks of an "appraised value," without prescribing how such appraisement is to be made. No such provision was made by any United States act upon this subject, which acts, on the contrary, require only "*satisfactory proof*" of the value. The evident object of the law is simply to ascertain the value of the horse at the time of his entering into service. And if any two officers had at that time, at the request of the owner formed an *estimate* of his value, the mere *time of formally reducing such estimate to writing* is of no consequence.

25. Extra Duty Pay, January 1st, 1862.

The obvious construction of paragraph 882, of the Regula

tions is, that the lower rate of extra pay viz: twenty-five cents per day is intended for the lower grade of employees, "*laborers and teamsters*," and the higher rate of forty cents per day is intended for the higher grades of "*mechanics*" and other *skilled persons*, under which designation Druggists and Clerks, must come. They are to be paid by the Medical (or Purveyor's) Disbursing Clerk. "Cooks and nurses," may, by the Regulations, be paid by a Quartermaster in the *absence* of such disbursing officer.

26. Lost Certificates.

In cases of the loss or non-receipt of *certificates of pay due*, the claimant should make affidavit before a Justice, (to be certified by the Clerk of the Court,) stating the loss of his certificate—that he is, and has been, unable to procure a duplicate, for reasons therein setforth—and that he has received no part of the amount claimed. He should also produce the certificate of *some Confederate States officer* of his identity, and of his having served during the time for which he claims.

27. Commutation of Transportation in lieu of Furlough.

The act of December 11th, 1861, entitles the soldier to transportation "*home and back*." This obviously confers the right of travel from the point at which he received his certificate of being so *entitled to his commutation*, or from the place of his death, (payable to his heirs under act of 15th February, 1862.)

28. As to when Pay of Officers Commences.

The *general rule* established by various decisions of the Comptrollers at Washington, and sustained by continued practice, was that officers pay commences from *the date of their acceptance*, as being the evidence of their liability to duty. But it was also properly decided that where it is *otherwise* shown at what time the officer's *service commenced* his pay will commence from that date, because his *performance of duty* is an actual acceptance of the appointment. It was also decided, in other cases, that where an officer is promoted and the commission specifies that it is to take effect from *an antecedent date*, he is entitled to the pay of the *superior grade* from such antecedent date, without regard to the *exact nature of the duty* performed by him in the intermediate time. (Lieut. Jenkins' case, September, 1836.)

29. Commutation of Clothing claimed for Deceased Soldiers.

1st. When the soldier *died after the passage of the act of 8th October, 1862*, (which prohibits the future commutation of clothing, but allows "any balance of clothing due at the end of the year" to be paid for,) such soldier, if he *had not received* either his clothing or its commutation, was entitled to the value of such clothing to the time of his death, including the value of clothing allowed by that act, *pro rata*, in proportion to the length of time he survived the said 8th of October, 1862. That act allows the soldier *clothing in kind*, and as he died without receiving it, his claim is clearly good for its value.

2d. If the soldier died *before* the 8th October, 1862, his claim is, of course, only good for his commutation *under previous laws*.

3d. If the soldier died after the 8th October, and *after receiving* his last six months clothing (and his previous clothing) or its commutation under previous laws, he must be regarded *as settled with, according to the contract* under which he enlisted, and could not be entitled to the benefit of the act of 8th October, 1862, which only provides for the payment of *any balance* of clothing due at the end of the year. If the soldier was *paid* his commutation at the *commencement* of his last six months, (as has been the usual practice,) there could, of course, *be no balance* due him which he could claim under the provisions of this law.

4th. Paragraph 1033, of the Army Regulations, allows a greater amount of clothing for the first year, than the two subsequent years. The obvious intention was to require the overcoat, extra coat, etc., to last through the three years service. The issue of *clothing in kind*, not being specifically directed until October 8th, 1862, that date must be taken as the commencement of the first year of such issue (or its commutation,) if commutation had been previously *paid up to that time*. If it had been previously paid up to the time *aforsaid, beyond the 8th of October*, the first year (under that act,) would begin *at the end of such period*.

30. Appraisements under the Impressment Act.

Where the appraisement was made *previous* to the action of the Board of Commissioners for establishing prices under the Impressment Act of March 26th 1863, such appraisement duly certified by the impressing officer or Quartermaster *must govern*, especially as the act expressly declares that in case of disagreement, "the decision of the umpire

shall be paid:" and the 2d section authorises the impressing officer "to pay the owner the *compensation fixed by the appraisers.*" The action of the Board of Commissioners, under the 5th section, can only apply to appraisements made at a date subsequent to such action in "*fixing the prices to be paid by the government,*" whilst the 2d section authorises and directs the impressing officer to make payment *at the time of said taking and appraisement.*

31. Receipts of Railroad and Express Companies.

When Quartermasters or Commissaries, are *duly ordered* to transmit supplies by railroads, or moneys by the principal express company, to pay for supplies, the receipts of the proper officers of such railroads, or express company, are good vouchers, and must be allowed to the credit of such Confederate States officers in the settlement of their accounts. The Quartermaster or Commissary, to whom the consignments are properly made, may be charged with such remittances until their non-delivery is established; but not the officers who produce proper receipts for the due delivery of such articles or money, (*in compliance with their orders,*) to such public carriers, who then become responsible to such officers for their safe conveyance and delivery.

32. Horses sent into Winter Quarters.

The act of March 6th, 1861, (No. 48,) allows to "mounted non-commissioned officers, privates, musicians and artificers, forty cents per day for the use and risk of their horses." In the present case, it seems the horses were sent to "various points to winter." From this statement, it is to be presumed they were sent to safe and well supplied winter quarters, where the Government supported them without any such "*use and risk,*" as the law contemplates. If they had remained with the men *in service*, they might have died from want of forage, or may have been killed or lost in battle, in raids, or skirmishes. If these horses had been lost, or died from want of forage, or of proper care, whilst in such winter quarters, the Government would be liable for their loss to the extent of \$200 each, under the act of 1849.

33. Bounty under 7th Section of the Conscript Act.

The 7th Section of the Conscript Act, (approved April 16th, 1862,) provides that "all soldiers *now serving* in the army, who are *continued in service* by virtue of this act, and who have *not received* the bounty of \$50, allowed by exist-

ing laws, shall be entitled to receive said bounty." The 1st section of this act, "continues in the service for three years from the date of their original enlistment, all persons now in the armies of the Confederacy." Under the above provisions of these two sections, the claim for bounty is good for all those who had *enlisted or volunteered* for twelve months, but were discharged or died, before the end of that period, but after the passage of this act, and who had not previously received such bounty. The act of 11th October, 1862, also allows this bounty to those who have entered the Confederate States armies for three years or the war, although they "may have been killed in battle, died, or been honorably discharged before the expiration of the first year's service of this term."

34. Bounty not allowed to Negro Musicians.

This claim for bounty was allowed by the Second Auditor in the account of Captain Groce, A. Q. M., on the ground that the act of April 15th, 1862, authorises the employment of colored musicians for the same pay as musicians regularly enlisted, "and that the act of December 11th, 1861, grants a bounty to "all privates, musicians, and non-commissioned officers of the provisional army who shall serve for three years or the war, "to be paid to all now in service for three years or the war, at the end of the first year's service, and to all who shall hereafter volunteer or enlist for three years or the war, to be paid at the time of entry into the service."

In the 1st place, the act of December 11th, 1861, allows bounty to privates, etc., to be paid, obviously for the act of *volunteering or enlisting*. This surely cannot embrace, or refer to a negro, who cannot either volunteer or enlist, but is only *hired or employed*.

In the 2d place, the act of April 15th, 1862, declares that "whenever colored persons are employed as musicians, they shall be entitled to the same pay now allowed by law to musicians, regularly enlisted: *Provided*, That no such persons shall be so employed except by *consent of the commanding officer* of the brigade." This act allows to colored persons the same *pay*, but says nothing as to *bounty*, which has always been regarded as the reward offered to citizens or white persons for "*volunteering or enlisting*" in the army. The term "*employed*," which is here used in reference to colored persons, shows the distinction made between "*enlisting*" and being *hired or "employed*." Besides this, the restriction imposed by this act, subjecting these persons to the *consent* of the Brigadier General, also shows the dis-

inction between the employing (or hiring) of a negro and the volunteering or enlisting of a citizen or white person. This bounty cannot, therefore, be allowed to a negro.

35. Conscripts not Entitled to Bounty.

Bounty has always been regarded as the bonus or reward for *volunteering* or enlisting into the military or naval service. But where the operation of the Conscript Act brings them into the service without volunteering or enlisting, it must be regarded as a compulsory process of recruiting for the army, and in such case the soldier can hardly be considered as entitled to this reward.

The inquiry has been made whether conscripts who may elect to enter the Marine Corps are entitled to bounty under the act of October 2d, 1862, which declares that "if any person who has, or is about to be, enrolled for service in the army, at any time before being assigned to any company, shall declare to the enrolling or commanding officer that he prefers being enrolled for service in the Navy or Marine Corps, it shall be the duty of the said officer to enroll such person for the service which he may prefer, and to transmit to the Secretary of the Navy a list of persons so enrolled."

This act merely gives to the conscript a choice of the branch of service into which he may prefer to enter; just as the 13th section of the Conscript Act, (April 16th, 1862.) permits all persons (simply as a favor) to *volunteer into companies* then in the service, previously to their being made conscripts by that act, and being as such enrolled. In such case if they shall so volunteer, they become, of course, entitled to bounty. The 7th section of the conscript act only authorizes soldiers then in the service, (who, of course, were originally volunteers), who are *continued* in service by that act, and who had not received their bounty, still to receive it. But there is no law, and no just conclusion of reason that seems to allow bounty to conscripts *already enrolled as such*, whether they have selected, or not, one branch of the service, or one company, in preference to another.

36. Courts Martial.

Paragraph 1021 of the Army Regulations, allowing compensation to *officers* for their attendance upon Courts Martial, does not include privates or non-commissioned officers. The payment of this compensation to officers is to be made upon the *certificate of the Judge Advocate*, under paragraph 1026 of the regulations.

37. Orders for Transportation.

Certified copies of orders for transportation are sufficient vouchers for Quartermasters, where the signature is verified or certified by a Confederate States officer or by an authorized officer of one of the Departments. This is rendered necessary by the fact that these orders for transportation, may, at times, extend *throughout the entire Confederacy*, and thus render it impossible to leave the *original* order with each Quartermaster.

38. Re-enlistment and Conscription.

If a soldier re-enlists, or is conscribed, at the end of his term of service, the *first year* of such *re-enlistment* or conscription is the *first year under a new contract*, and the soldier is entitled to such allowances as are authorized by the regulations for the first year of each soldier's service. The commencement of such service, of course, dates from the date of the re-enlistment or conscription.

39. Payment of Bounty.

Where the rolls show that *pay* and *clothing* have been received by the soldier, and no mention is made of *bounty on any rolls*, (either bounty or pay) nor any evidence can be found, from certificates or otherwise, that bounty has been paid, it may be taken for granted that it has not been paid, and may be allowed accordingly.

40. Mode of Calculating Pay.

When a soldier, or seaman, serves a *full month and the fraction of another month*, he is to be paid for the full month (whether it be February or May,) *as a month of 30 days*, and for as many days as he has served in the other month, calculated at the same rate of **30 days** to the month, according to the regular pay tables. For instance, if a man serves all February and to the 12th of March, he is to be paid for a month of 30 days in February and for 12 days in March, the day *he enlists and the day he is discharged* being always included, whether he leaves at eight in the morning or at eight in the evening. If he serves *less than a month* he is to be paid for *every day he serves* at the above calculation-rate of the pay tables, allowing 30 days to the month. For instance, if he serves from June 25th to July 5th, he is to be paid for six days in June and five in July, or if from the 25th May to 5th June, his pay is for seven days in May and five in June, or if he serves altogether 10 days, the calculation is simply

(at \$15 per month,) as 30 days are to \$15, so are 10 days to \$5.

41. Contractors.

When the Government, by its action, prevents the full performance of a contract, contractors are not entitled to be paid as for a complete fulfilment of the contract, but only for such expenses and losses as shall obviously and positively result from the interference of the Government. As where a contractor agreed to furnish at a certain point a certain number of wagons for transporting supplies, and the order for the movement of the troops was countermanded, the contractor can only be repaid his expenses incurred in effecting this partial performance of his contract.

42. Claims of States.

In cases of claims by the different States against the Confederacy, it is sufficient for the State to show that supplies for the use of troops in the Confederate service have been actually purchased and paid for by the State for that purpose. And in such State claims, the pay rolls received by the commanders of companies, and not by the men, may be allowed, if *they have been allowed by the State.*

43. Certificates of Commanders of Companies.

Certificates of Captains, or officers commanding companies, should (*as a general rule*) be accepted as sufficient evidence of the amount due to the soldier, unless they can be shown to be incorrect by the pay rolls or other vouchers.

44. Soldiers Clothing Furnished by a State.

The act of August 30th, 1861, provides that where "any State shall furnish to its troops and volunteers in the Confederate service, such clothing, then the Secretary of War is required to pay over to the Governor of said State, the money value of the clothing so furnished." Under this act, the War Department issued regulations of the 10th October, 1861, authorizing the payment to be made "on receipts *produced by the State*, signed by the commanding officer of the regiment, battalion, or independent company, certifying the number of men so furnished by the State." The Quartermaster General, having asked the opinion of the Comptroller as to the proper course to be pursued in settling these claims, it seemed to him to be advisable that the Governor of the

State should make a requisition for the amount, and should furnish the certificates of the State Quartermaster General, or of the Quartermaster who furnished or issued the clothing to the troops.

45. Claims of Deceased Soldiers.

Claims of deceased soldiers who had enlisted before the passage of the act of 15th February, 1862, (which directs payment to be made to the heirs,) may be paid to the *administrators*, upon proper certificates, under seal of the Court. The opinion of the Attorney General of May 9th, 1862, regards this act as unconstitutional, so far as it interferes with the established principles of the law in relation to enlistments made *previously to its passage*. Those principles required all assets to be paid to the *personal and legal representatives* of the deceased.

46. Executors and Administrators.

The production of the *original will* by the Executor, (before the granting of probate,) accompanied by satisfactory proof of the signature of the Testator, is sufficient authority for the Executor to receive any amounts due by the Government to the Testator. 'As a general rule, the common law does not allow an Executor, before receiving letters testamentary, to *dispose of* any part of the estate, except for funeral expenses, nor to exercise any farther control than is *necessary to its preservation*; but no law prevents, or prohibits, his receiving debts due before probate granted. In England, and in some of our States, in trials at common law, the *original will* is required to be produced, and the probate alone is not regarded as sufficient evidence. In some States the will is required to be *proved in Court de-novo*, even after it had been allowed by the Ordinary.

47. Mileage Charged by Marshals.

1st. The mileage charged by Marshals in serving process, is to be computed from the Court House at which each case is tried, to the residence of the person upon whom the process is served.

2nd. Marshals are entitled to mileage upon *every writ or petition*, whether served within, or out of the district in which the Court is holden, under the 15th section of the act to establish Judicial Courts of the Confederate States.

3rd. The allowance of five cents per mile for the "*distance actually travelled*," is held to signify the *whole distance*

travelled both in going and returning by the most direct mail route.

4th. Writs of garnishment and petitions of sequestration, come under the head of any "warrant, attachment, summons, *capias*, or *other writs*."

5th. If the charge of twenty-five cents for entry and endorsement of each writ, in addition to the \$2 for service, is allowed by the *laws of the State*, it may be allowed under section 15 of the above act, No. 83, (approved March 16th, 1861.)

6th. If the defendant is *actually served* with process at some point *nearer* than his residence, he can only be charged with mileage to and from *that point*, as being the "distance actually travelled."

48. Commutation of Clothing for the Militia.

There seems to be no reason why the militia, when brought into the Confederate service, should not be entitled to clothing or its commutation. The act of March 6th, 1861, placed the militia, when called into service, on the same footing, as to pay and allowances, as other soldiers. The act of August 30th, 1861, allows "clothing for the *entire forces* of the Confederate States." I therefore think the militia are entitled to the value of clothing pro-rata, in proportion to the time for which they are brought into service, or have actually served, *equally with other soldiers*, under the laws existing at the time of their being brought into service, and during their actual service.

49. Horses Lost in the Service.

The Confederate States act of March 6th, 1861, allowing compensation for "*horses killed in action*," does not repeal the United States act of March 3rd, 1849, except in so far as it conflicts with the Confederate States act in reference to "*horses killed in action*." The United States law is therefore still in force. The 1st section of that act allows compensation to the extent of \$200, for horses so wounded as to die, or when so wounded, are abandoned by order of an officer, or when they have died for want of forage, or when the rider is dismounted and separated from his horse and ordered to serve on foot, and his horse is lost in consequence, or when the horse is lost from being turned loose to graze by order of the commanding officer, or is lost for want of transportation, or the dangers of the sea. The 2d section allows compensation for the value at the time of entering the

service of "any horse, mule, wagon, etc., whilst in the military service, either by *impressment or contract*," where such property is lost "by death, or abandonment or for want of forage, or by unavoidable accident." The 4th section extends the benefit of this act to *any person* who is the *owner* of such horse, or his equipments, as well as to cases where such horse and equipments have been "lost, captured, destroyed, or abandoned in the manner above mentioned"—upon the owner making *satisfactory proof*, as in other cases.

50. Signing of Pay-Rolls.

As the Army Regulations respecting payment on the rolls, declare that "when the receipt on a pay-roll is not signed by the party, the payments must be witnessed, and if practicable, by a commissioned officer," and as no mention is made of the party's *mark* being required, it would seem to be a sufficient compliance with the regulation to have the attestation of the witness, together with the approval of the rolls by the officer in command of the company. It is, however, *advisable and proper* that the soldier's or seaman's mark should be obtained, to render the receipt perfect and complete.

51. Signature of Officers to be Verified.

Where the signature of the officer in command, subscribed to any certificate, or other voucher, is not known at the Quartermaster General's Department, nor at the War Department, it should be verified by the affidavit of some disinterested person whose signature is known, or by the certificate of some Confederate States officer, whose signature is also known at some one of the departments.

52. Premium or Discount on Bank Notes, &c.

If a Commissary, or other Government officer, shall have received Bank notes, or other funds, which may have appreciated in value above the Government currency, he should, in exchanging them for Treasury notes, charge himself with the premium and deposit the same with some Depository to the credit of the proper appropriation. The United States act of August 6th, 1846, as well as paragraph 896, of the Army Regulations, forbid all officers to make any premium or profit, on the sale or exchange of public securities. And in case of unavoidable loss upon Bank notes, arising from a depreciation in their value, after the

officer had received them upon a careful ascertainment of their value at the time of their receipt, such officer should apply to Congress for relief.

53. Commutation for Furloughs.

By the act of December 11th, 1861, (No. 306,) as well as by the conscript act of April 16th, 1862, the soldier is to "elect to receive the commutation *at such time as the furlough would otherwise be granted,*" which *time is, by the act of December, 1861, such as the Secretary of War may deem most compatible with the public interest.*" The *time, therefore, is optional with the Secretary, and if that time (as regulated by the Secretary,) had not arrived, the soldier could not be entitled to make his election, and consequently not until then could he be entitled to the commutation.* The above acts only refer to *re-enlisted men, and seem to intend this furlough (or commutation) as a reward for re-enlisting, or a compensation for conscription.*

54. Regulations of the War Department.

Regulations of the War Department, made in pursuance of law, and approved by the President, are, by act No. 52, (approved March 6th, 1861.) as binding as the law itself upon all concerned.

55. Forage.

The certificate of an officer claiming forage, or its commutation, should state that the horse was actually kept for the public service.

56. Officers Suspended from Duty.

When officers are suspended from duty only, they are still entitled to their pay and rations.

57. Officers Assigned to Commands.

There is no law authorizing a Lieutenant, while in command of a company, to claim the pay of a Captain. To entitle an officer to the pay of a higher grade, he must be actually appointed to that grade, and not merely assigned to its command. Pay follows the commission, and not the duty performed.

58. Extra Pay.

No officer can be allowed extra pay for more than one service at the same time.

59. Pay of Detailed Men, (Act of May 1st, 1863.)

The act of May 1st, 1863, allowing compensation not to exceed \$3 per day in lieu of rations and allowances, seems intended to apply to men employed by the *commander of a Department or District*, or in some *Military Bureau*, on "the recommendation of the officer in charge of such men, and the approval of the commander, or Chief of Bureau, with the sanction of the Secretary of War." This employment of detailed men contemplated by the act, is generally considered to be that of *clerks and skilled mechanics*.

60. Chief Clerks in the Departments.

Correspondence being the regular and "*ex officio*" duty of the Chief Clerks in the Departments, *no extra* compensation can be allowed therefor.

The extra pay allowed to Chief Clerks by acts of Congress, is compensation for the *extra duty* of disbursing such funds as are entrusted to them for that purpose.

61. Marshals.

Marshals are entitled to just compensation for transporting *witnesses in custody*, as well as for the transportation of criminals, not exceeding the compensation allowed to Sheriffs by State laws for similar duties.

62. District Attornies.

District Attornies are entitled to a fair and just compensation for extra services performed at the request of the head of a Department, when there are no fees allowed by law, or custom, for such services.

63. Collectors of Customs.

Collectors of customs, acting as Superintendents of Light-houses, are entitled to commissions upon disbursements made by them in that capacity, subject to the limitations of the 18th section of the act of May 7th, 1822.

The act of 1799, authorizing Collectors to employ *occasional Inspectors*, and others in aid of the revenue, does not authorize them to employ persons to perform *clerical duties in Custom-houses*, and to pay them out of the revenue.

64. Pay of Civil Officers.

As a general rule, public officers in the civil employment of the Government, (including all the Departments,) are

entitled to the pay or emoluments appertaining to their offices, only from the time of *entering upon* the performance of their duties.

65. Congress.

Joint resolutions of Congress, when regularly and legally passed, have all the effect of law, and are to be so regarded. But *seperate* resolutions of either House have no such effect, except as regulations to control their own proceedings.

66. Enlistments.

Enlistments into the army made under the provisions of the various acts of Congress, must be regarded *as contracts*, and are to be construed according to the rules and principles which regulate contracts generally.

67. Special Counsel.

It was regarded under the United States Government as an established rule that any head of a department could, in his discretion, employ *special counsel* in behalf of the Government.

68. Compensation.

The term "*compensation*" has generally been regarded as equivalent to the word "*pay*" or "*salary*," and as not including "*rations*" and other "*allowances*."

69. Extra Compensation.

The United States acts of March 3rd, 1839, and 3rd March, 1842, forbid any person whose salary, pay or emolument, is fixed by law, to receive any extra allowance or compensation, in any form whatever, for the performance of any public service, unless the same be authorized by law.

70. Persons Performing the Duties of Another.

Where the incumbent of an office receives the salary affixed to it by law, no person performing the duties of such office can receive any compensation therefor.

71. Construction of Laws.

Where any act of Congress has, either by actual decision, or by continued usage and practice, received a determinate construction, which has been acted upon for several years in succession, a change in this construction can only be justified by the evidence of palpable error or injustice. The declara-

tious or remarks of members of Congress, in debate upon the passage of a law, cannot be received as evidence of the intendment of Congress so as to control, or countervail, the just, obvious and legal interpretation of the law.

72. Assignments.

An assignment of payments due under a contract with the Government, accompanied with due notice to the proper officer, is to be allowed, if not prohibited by the contract. If such assignment should be legally rescinded, due notice of this also must be given to the Government.

73. Disbursing Officers.

The accounting officers cannot allow credit to disbursing officers for payments *not authorized by law*—and in all cases of such over payments, illegal payments, &c., application for relief must be made to Congress.

74. Witnesses to a Bond.

The omission of witnesses to a bond does not invalidate the bond. If the handwriting of the obligor can be proved it is as valid without, as with witnesses.

75. Courts Martial.

An officer *on leave of absence*, if ordered to attend his own trial before a court martial, is not thereby raised from *leave pay* to *duty pay*.

76. Acts and Decisions of Predecessors in office.

There is no law and no decision, which authorizes the head of a Department, or of a Bureau, to supervise and reverse the acts or decisions of his predecessors in office, for the relief of claimants. Applications for relief in such cases should be presented to Congress.

77. Assignees.

Assignees cannot be classed under the head of "*legal representatives*." Executors and administrators alone come under this denomination, being the substitutes of the principal as to personal rights and responsibilities. This term does not comprehend even the "*heirs*," much less "*assignees*."

78. Negroes Impressed as Free.

In cases where negroes are impressed as being free, who are generally reputed to be so, and are so in fact, but are afterwards claimed *as apprentices* by the person to whom they have been legally bound or indentured, their wages must be paid to such claimant *after the production of legal evidence of such apprenticeship*. The Quartermaster who paid the negro thus impressed and thus generally known as a free man of color, and who is so *recorded on the rolls*, cannot be held liable for payments made previously to the time of such legal notification, and where no advertisement has been made of the escape of such apprentice. Nor is the Government bound to indemnify the claimant for any payments made prior to such legal notification or advertisement.

79. Claims of the Heirs of Deceased Soldiers.

Where a soldier dies leaving both father and mother, but no widow or children, and where the father dies *before making his claim for the arrears of pay*, leaving a widow and children, the widow claiming is entitled to draw the pay under the act of 15th February, 1862, directing *payment to be made as follows*: 1st, to the widow; 2d, to the children; 3d, to the father; 4th, to the mother, &c. The object and intent of this law is generally understood to be that of facilitating the payment of these claims to the indigent families and heirs of deceased soldiers, and to obviate the necessity for obtaining letters of administration. The provisions of this law, which expressly direct that these claims "*shall be paid*" to such heirs, (in the order above stated,) constitute the terms of the *contract* under which the soldier has enlisted *subsequent to the date* of that act, and by that contract his claim is to be governed.

80. Government Contracts.

No Secretary of any of the Departments can lawfully make a contract to bind the Government, without the authority of some law to that effect, or without some appropriation for that object. An obvious and palpable *clerical error* in the contract, or bond of a contractor is not held to operate to his prejudice. Contractors with the Government to whom advances have been made by the Departments under authority of law, are not included in the designation of "*persons in arrears*," referred to by the act of 1822.

81. Assignments of Contracts.

As a general rule no contract with the Government can be assigned over to another person without the express assent of the Government, but the Government may assent to the substitution of new parties to a contract with the Government, when requisite to fulfil the contract.

82. Construction of Statutes.

A *retroactive* effect, especially where it would infringe, or impugn any part of a contract, cannot be given by construction to the words of a statute, unless they should manifestly require such construction and cannot admit of any other just interpretation.

83. Persons in Arrears.

The act of January 25, 1828, which declares that no person *in arrears* to the Government shall be paid his compensation until he shall account for and pay into the treasury all sums for which he may be liable, only refers to persons who are ascertained upon the *settlement of their accounts to be in arrears*, and where the time for accounting has actually passed. If there be any amount due them *over and above such deficiency*, it should not be retained, but should be paid over to them. This act does not refer to officers to whom advances have been made upon regular requisitions and warrants, in rendering their accounts for which advances they have been necessarily and unavoidably delayed.

84. Courts of Record.

A Court of Record has been generally held to be one which is expressly so made by the law of the State which creates it, or which has been so adjudged by the tribunals of the State, or which proceeds according to the course of the common law, with a jurisdiction not limited in amount, keeping a regular record of its proceedings, and having the power of fines and imprisonment.

85. Officers on Leave of Absence.

Officers *on leave of absence* must return to their duty, whenever that may be, *without expense to the Government*. Orders given for their return to duty are not to be so construed as to allow them transportation.

86. Partners Signing a Bond.

The signature of partners to a sealed instrument must be

made by each partner separately, and with a separate seal, as there is no partnership seal, and no partnership signature in such cases can be allowed.

57. Department Clerks.

No clerk in the Government departments can act as agent or attorney for claims against the Government.

58. Bonds Filed with the Comptroller.

The Comptroller is not authorized to give up a bond or contract either to the obligors or to any one else, except by an order from the head of the department where the contract was made.

The official bonds of disbursing officers, or agents of the Government, which are filed with the Comptroller, are not surrendered on the final settlement of their accounts, nor on the execution of new bonds. The Comptroller is not authorized either to relinquish security or to require new, or additional security. He can only authorize the withdrawal of bonds for the purposes of *suit*.

59. Lapse of Time.

Although lapse of time furnishes strong presumptive evidence against the justice of a claim, it is not an insuperable bar to its allowance and payment where the delay can be reasonably accounted for.

90. Soldiers Detained beyond their Term of Service.

When a soldier does not receive his discharge at the end of his term of service, and is retained in the service beyond that time, he is to be paid to the time of his actual discharge.

91. Prisoners.

When a soldier is taken prisoner by the enemy, he is entitled to his pay and allowances during his captivity, and to his travelling allowance from the place of his release to his home.

92. Soldiers Illegally Discharged.

If a soldier is illegally discharged, or against his will, he is entitled to be paid up to the time of the discharge of his company, or to the expiration of his term of enlistment, (whichever shall first occur.)

93. Sureties upon Bonds.

In case of the death of a surety on a bond, his estate is

not thereby released from liability for the subsequent defaults of the paymaster or quartermaster.

94. Quarters and Fuel.

The Army Regulations, allowing commutation for fuel and quarters, restrict it to the time when the officer is actually at his post, or when *temporarily absent on duty*, and do not treat it as an *emolument*. Officers on leave of absence, or awaiting orders, are not entitled to fuel and quarters. An officer who receives his quarters in kind, should receive his fuel also in kind.

95. Travel Pay.

Travelling expenses can only be allowed when the journey is performed by direction, or approval, of the proper authorities. The charge for travelling expenses is to be calculated by the *shortest mail route, or the route usually travelled*, as the case may be.

96. Ex Post Facto Laws.

Laws which modify or alter the jurisdiction or powers of judicial tribunals are not regarded as "*ex post facto*" laws within the scope of the prohibitory clause of the Constitution. This clause has been held to refer only to penal statutes, and not to those affecting civil rights or remedies. (See *Culder & Bull*, 3 Dallas, 386.) Yet, in England the reverse was decided by Lord Raymond. But a law which operates retroactively so as to impair the obligation of a contract is essentially invalid and void. Laws which impair the obligation of contracts are prohibited by most of our State Constitutions, and also *as to States* by the Confederate Constitution. Statutes are held to be *prima facie* prospective in their operation; and retrospective laws being odious in their nature, the presumption should be that they were otherwise intended where a prospective construction is *justly admissible*.

A law *annulling conveyances* is unconstitutional as impairing the obligation of contracts. (See *Fletcher & Peck*, 6 Cranch, 87.)

97. Contingent Expenses of Courts.

The "contingent expenses" of courts which marshals are authorized to pay, are only those which arise in the holding of courts according to appointment, at the specified time and place.

98. Powers of Attorney from one Co-Executor.

Payments made to a person acting under a power of attorney from one of several executors are valid—co-executors being regarded in law as one power, or one entity, and the act of one as the act of all.

99. Payments to a Wrong Person.

If a warrant has been properly issued, and has been paid by mistake to a wrong person, no new requisition need be issued to cover the claim. A requisition having been already issued, and upon that requisition a warrant, which in legal contemplation is yet outstanding, the proper course is to issue a duplicate warrant, reciting the facts as to the first warrant, or to withdraw the first and issue another, to be treated as if presented the first time for payment. The person who made the payment to the wrong person is chargeable with such mistake.

100. Survivorship.

Where there is a mere naked power, it does not survive, but a power coupled with an interest, or a trust, does survive.

101. Marshal's Fees, etc.

The taxation of the court, and the allowance and certificate of the judge are conclusive upon the accounting officers, when the service, or purpose, is specified in the Act of Congress, and the sum allowed therefor is not exceeded.

LEWIS GRUGER,

Comptroller.

SYNOPSIS

OF THE

BUSINESS OF THE COMPTROLLER'S OFFICE.

1ST BRANCH. *Collectors of Customs.* SEC. 1st. Correspondence, examining and deciding Law questions. 2ND. Weekly Returns of Import and Export Duties. 3RD. Monthly Returns and Estimates of Expenses of Collecting the Revenue. 4TH. Returns and Estimates for Lighthouses. 5TH. Letters of explanation on the above.

2ND BRANCH. *District Judges, District Attorneys, Marshals.* Correspondence on Law questions in the settlement of accounts, preparing requisitions for their expenses, &c.

3RD BRANCH. *Collectors of the War Tax.* Preparing Requisitions for their expenses, letters of explanation, &c.

4TH BRANCH. *Bonds of Disbursing Officers, viz: Quartermasters and Paymasters of the Army and Navy, and all civil disbursing officers.*

5TH BRANCH. *Requisitions.* 1ST. Examining and signing all Requisitions, of all the Departments, for Judges, Collectors, Marshals, &c., and for quartermasters and Paymasters of the Army and Navy. 2ND. Entering Requisitions, balances of appropriations, &c., in the Requisition Books, by the Requisition Clerk.

6TH BRANCH. *Warrants.* 1ST. Examining and signing Warrants of all the Departments for the above named officers. 2ND. Entering Warrants and Balances of Appropriations, &c., in the Warrant Book of the Warrant Clerk.

7TH BRANCH. *First Auditor's Accounts.* Revising carefully and settling the accounts pre-examined by the First Auditor, deciding upon doubtful questions of Law, &c.

8TH BRANCH. *Second Auditor's Accounts.* Revising carefully, and settling the accounts pre-examined by the Second Auditor, deciding upon doubtful questions of Law, &c.

9TH BRANCH. *Defaulters.* Instructing District Attorneys, to institute suits upon the bonds of defaulting disbursing officers, when reported by the different departments to be in default.

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